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No. 83-1844

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

WILLIAM S. DOWNING,
Petitioner,

v.

OAKLAND RAIDERS, LTD., *et al.*,
Respondents.

BRIEF OF RESPONDENTS NATIONAL FOOTBALL LEAGUE, *ET AL.*, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the unilateral relocation of the Oakland Raiders' NFL franchise from Oakland, California to Los Angeles, California, in violation of the NFL Constitution and By-Laws and over the unanimous opposition of the NFL Executive Committee, states a claim against the NFL and its member clubs under Section 1 or 2 of the Sherman Act. [1]

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[1] This brief is submitted on behalf of the NFL and all NFL member clubs, except the Oakland Raiders, Ltd.

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COUNTERSTATEMENT OF THE CASE

The Oakland Raiders ("Raiders") club of the NFL was an early member club of the American Football League ("AFL"), and commenced operations in Oakland, California in 1960. The decision to conduct AFL operations in Oakland was made jointly by the remaining AFL clubs, all of which contributed portions of their own assets to create the Raiders. The Raiders thereafter shared with the other AFL clubs the economic risks and rewards of that league's coproduction, comarketing, and revenue-sharing activities.

In 1966, the NFL and AFL agreed in principle to a plan under which the two leagues would consolidate their operations into an expanded single league, and each of the then-existing AFL member clubs, including the Oakland Raiders, would receive franchises in the NFL. That plan was approved by Congress in that same year. 15 U.S.C. § 1291 (1982). The expanded single league commenced operations in February, 1970.

A formal agreement for effecting the NFL-AFL consolidation was executed by all member clubs of both leagues. That agreement provided that all clubs of both leagues would remain in their home communities, including the Raiders in Oakland, until and unless the NFL Executive Committee determined otherwise. Pursuant to that agreement, the Raiders continued to present NFL football in Oakland as an NFL member club through the 1979 playing season.

In January, 1980, the Raiders decided to relocate to Los Angeles and present NFL football at the Los Angeles Memorial Coliseum ("Coliseum"). The NFL Constitution and By-Laws required that such transfers be approved by the affirmative vote of three-fourths of the member clubs of the League.

The Raiders refused to submit their proposal to the League for evaluation and approval, and on March 1, 1980, announced their intention to operate as the NFL's Los Angeles franchise, beginning with the 1980 playing season. The NFL made an independent investigation of the proposed transfer and shortly thereafter, the NFL Executive Committee, without dissent, voted not to approve the Raiders' transfer. The League then secured a preliminary injunction prohibiting the Raiders from operating outside Oakland until the League determined otherwise. NFL Commissioner Rozelle further stated that no Raiders' games would be scheduled in Los Angeles.[1] In June, 1980, the Raiders joined in an already pending action brought by the Coliseum against the NFL, with both plaintiffs alleging that the League's refusal to approve the Raiders' transfer was a violation of Section 1 of the Sherman Act.

An initial trial of that action in 1981 resulted in a hung jury and a mistrial. In 1982, judgment was entered on a jury verdict in favor of the Raiders and the Coliseum and was subsequently affirmed by a divided panel of the Ninth Circuit Court of Appeals. *Los Angeles Memorial Coliseum Commission* v. *National Football League*, 726 F.2d 1381 (9th Cir. 1984). On

[1] Independently, the City of Oakland filed an eminent domain suit against the Raiders and secured an injunction barring the transfer. *See* City of Oakland v. Oakland Raiders, 32 Cal.3d 60, 183 Cal. Rptr. 673 (1982).

June 19, 1984, petitions for rehearing and suggestions for rehearing *en banc* in that case were denied. A separate trial on damages in 1983 resulted in judgments in favor of the plaintiffs totalling approximately $50 million. Those judgments are presently the subject of appeals to the Ninth Circuit.

Petitioner is an Oakland fan. His claims arise out of the Raiders' unilateral relocation to Los Angeles, which petitioner alleges was actually the result of a conspiracy among the Raiders, the Coliseum, and the NFL. The action against the Raiders and the Coliseum was dismissed on June 24, 1980. Pet. A-6-8. A separate judgment was entered in favor of the NFL on September 30, 1980. Pet. A-9-11. Both judgments were affirmed by a unanimous Court of Appeals on June 21, 1983. Pet. A-1-3.

In short, petitioner's claims rest on the incredible contention that the NFL, which now faces the prospect of paying a heavy and punitive damage judgment for attempting to maintain the Raiders in Oakland, actually *conspired* with the Raiders and the Coliseum to bring about the Raiders' relocation to Los Angeles. This contention, already rejected by both the District Court and a unanimous Court of Appeals, does not merit further review by this Court.

REASONS FOR DENYING THE WRIT

The Raiders' unilateral relocation to Los Angeles, and the Ninth Circuit's treatment of the antitrust and public interest questions raised in the *Los Angeles Coliseum* case, present important issues deserving of consideration by this Court. In due course, the NFL will petition this Court to issue a writ of certiorari to the Ninth Circuit in that case. *This* case, however, is an inadequate vehicle for posing those issues and petitioner lacks standing to present them. Further, as it applies to the NFL, this case is based on a factual premise that is demonstrably false.

The Ninth Circuit found that "[n]o factual basis supported the claim that the National Football League ("NFL") conspired or acquiesced in the Raiders' planned move to Los Angeles . . . ." Pet. A-2. The District Court made a similar

determination. Pet. A-9-10. Nothing in the record below or in any other court proceedings would or could support a contrary holding. Absent a finding of a conspiracy between the NFL and the Raiders or the Coliseum, plaintiff's antitrust claims against the NFL must fail.

The questions set forth in the petition, particularly those relating to market definition and the nature of professional sports leagues should, we submit, be addressed by this Court in an appropriate case. None of these issues, however, is presented in this case. Petitioner's invocation of the Act of Congress approving the merger of the NFL and the AFL (15 U.S.C. § 1291) is also misplaced. The Court of Appeals correctly held that the 1966 statute contained no broad grant of standing for consumers of sports entertainment to undertake its enforcement.

CONCLUSION

Both the District Court and the Court of Appeals correctly held that no triable issue of fact was presented by the claim that the NFL conspired to move the Raiders. *See First National Bank of Arizona* v. *Cities Service Co.*, 391 U.S. 253 (1968); *Mutual Fund Investors, Inc.* v. *Putnam Management Co.*, 553 F.2d 620, 624 (9th Cir. 1977). The petition sets forth no grounds for questioning that conclusion. The petition should be denied.

Respectfully submitted,

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July 9, 1984